IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.95 OF 2006
WITH
CIVIL APPLICATION NO.108 OF 2006

M/s.Universal Communications
Private Ltd. ..Appellant.

V/s.

Union of India & Anr. ..Respondents.

Mr.Ashok M. Saraogi for appellant.

Mr.K.R.Choudhari for respondent No.1.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 14, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mr.Choudhari waives notice for respondent No.1. The respondent No.2 is formal party.

4. As short question is involved, appeal is taken up for hearing forthwith by consent.

5. This appeal from order takes exception to the decision of the City Civil Court, Greater Bombay dated January 24, 2006 in Notice of Motion No.258 of

2006 in S.C.Suit No.383 of 2006. The said suit has been filed by the appellant for declaration and permanent injunction. During the pendency of the suit the appellant filed Notice of Motion for Interim injunction restraining the respondent No.1/defendant No.1 from encashing subject bank guarantee. In the plaint as well as affidavit in support of the Notice of Motion the specific case made out by the appellant is that the bank guarantee which is proposed to be invoked by the respondent No.1/defendant No.1 bearing No.5524019525 dated January 19, 2004 was given by the appellant in relation to the title "DHIDEER DUDDU" which was to be telecasted on the Doordarshan, Bangalore, whereas the respondent No.1/defendant No.1 was intending to invoke the said bank guarantee in respect of telecast of serial "YAGNA KUNDA" which was impermissible. In this backdrop interim relief was prayed on behalf of the appellant till the disposal of the suit. The Notice of Motion was moved for ad-interim relief before the trial Judge on 24th January, 2006. The trial Judge Instead of dealing with the issue of ad-interim relief proceeded to dismiss the Notice of Motion on the specious reasoning that even though the defendant No.1 was to encash the said bank guarantee in relation to the some other serial, the fact remains that the

plaintiff was bound to pay for the said serial to the defendant No.1. In the reason, adopted by the trial court, what has been glossed over is the main issue in the plaint and which is supported not only by affidavit but the documents on record to show that the bank guarantee in question has been given in relation to the serial "DHIDEER DUDDU" and for no other purpose. If it is so, such bank guarantee could not be invoked by the defendant No.1 in relation to some other serial unless the plaintiff appellant was to concede to that position. In the backdrop of the case as made out by the plaintiff/ appellant surely there was case for granting ad-interim relief. To that extent the view taken by the trial Court is not only untenable but also the trial court has committed manifest error in proceeding straightway to dismiss the Notice of Motion without even requiring the defendant No 1 to controvert the position on affidavit before the court. It would be a different matter if the defendant No.1 was to file affidavit and assert that the said bank guarantee was agreed to be invoked by the plaintiff even in respect of the serial "YAGNA KUNDA".

6. Be that as it may, all these questions will

be relevant at the stage of final disposal of the Notice of motion. Suffice it to observe that the impugned Judgment and order cannot be sustained for the reasons already noted above. Hence, this appeal succeeds.

7. The Impugned Judgment and order is set aside, instead the Notice of Motion No.258 of 2006 is restored to file to its original number to be heard by the trial court on its own merits in accordance with the law. All questions are left open.

8. The trial Court shall decide the said Notice of Motion uninfluenced by the observations made in the impugned Judgment or for that matter in the present order.

9. At this stage, counsel for the respondent No.1/defendant No.1 submits that since the parties are relegated to the trial Court, till the trial Court actually decides the Notice of Motion on merits the appellant/plaintiff be directed to keep the subject bank guarantee alive. Counsel appearing for the appellant/ plaintiff on instructions states that the appellant will take appropriate steps to keep the subject bank guarantee alive till such further order

to be passed by the trial Court in the restored Notice of Motion. That assurance is accepted.

10. In view of this arrangement in my opinion, trial judge will be well advised to dispose of the Notice of Motion expeditiously preferably by end of April, 2006. Even if the appellant plaintiffs were to keep the bank guarantee live that does not mean that the respondent No.1/defendant No.1 can proceed to invoke bank guarantee till the appropriate orders are passed by the trial court after pleadings are completed in the notice of motion having regard to the peculiar stand take in the present proceeding.

11. Accordingly, appeal as well as civil application disposed of.